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MEMORANDUM

To: Members of the Subcommittee on National Security, Emerging Threats, and International Relations

From: Vincent Chase, Chief Investigator

Date: July 28, 2004

Subject: Briefing memorandum for the field hearing entitled, entitled, *“Homeland Security: Surveillance and Monitoring of Explosive Storage Facilities”* at 10:00 a.m., Council Chambers of the City of San Mateo, 330 West 20th Avenue, San Mateo, California.

PURPOSE OF HEARING

The purpose of the hearing is to examine federal and state guidelines for the storage, monitoring and protection of explosive materials.

HEARING ISSUE

1. To what extent are the Bureau of Alcohol, Tobacco and Firearms (ATF) explosives storage facility safeguards and security guidelines adequate and effective in protecting publicly managed magazines?

BACKGROUND

At the request of Congressman Tom Lantos (CA-12) the Subcommittee will conduct a field hearing in San Mateo, California on August 2, 2004 at 10:00 a.m.

The hearing will focus on the potential terrorist threat against, and adequacy of safeguards and security measures for, local and state explosive material storage facilities. Concerns have been raised regarding the security of publicly owned explosive storage facilities due to the attractiveness of the material to terrorists and others with malevolent intent. **(Attachment 1)**

During weekend of the July 4, 2004, approximately 200 pounds of explosive material was stolen from the San Mateo County, Crystal Springs Reservoir explosives storage facility. The facility is part of a four-bunker site and is located on land owned by the San Francisco Water Conservation District. Suspects were apprehended within days of the theft. Authorities believe they have recovered all the explosives. **(Attachment 2)**

The San Francisco Police Department, the San Mateo County Sheriff's Office and the Federal Bureau of Investigation (FBI) jointly use the San Mateo explosives storage facility. The site was chosen because of its remote location and lack of visibility from a nearby highway. However, the bunkers are clearly visible from a nature trail. The trail is fenced off, except for guided tours three days a week. The trail is closed to the public on weekends. According to published newspaper reports, the stolen explosives were housed in locked steel storage containers surrounded by two locked gates. **(Attachment 3)**

The facility is used to keep explosive material for training (bomb squads and bomb detection animals) and for storage of confiscated weapons and ammunition.

The San Mateo County, Crystal Springs Reservoir explosives storage facility contained the following explosive material:

- C-4 (30-35 pounds) is a plastic explosive designed for military use. It is fairly stable and requires a detonator or blasting cap to fully explode. It is very powerful (a few pounds could blow up a truck) and

it has been used for terrorist purposes in the past (the bombing of the USS Cole in 2000).

- Binary Explosives (114 pounds) are made from two chemical components, which separately are not explosive, but form an explosive agent when mixed together. The Oklahoma City Bombing used binary explosives.
- Blasting Caps (800-900 units) a blasting cap is a detonator device that creates a small explosion that triggers larger explosions.
- DETA Sheet (75 feet) a plastic explosive in sheet form designed for use against steel targets because the sheets can be shaped and applied to irregular surfaces.

In 1970 Congress passed the Federal Explosives Law.¹ The Bureau of Alcohol, Tobacco and Firearms (ATF) administers the Federal Explosives Law. The purpose of the law is to “regulate the importation, manufacture, distribution and storage of explosive materials to protect interstate and foreign commerce against interference and interruption by reducing the hazards to persons and property arising from misuse and *unsafe or insecure storage of explosive materials.*” (emphasis added). (**Attachment 4**)

The Bureau of Alcohol, Tobacco and Firearms

Pursuant to the Homeland Security Act of 2002,² ATF was transferred from the Department of Treasury and became a new bureau of the Department of Justice on January 24, 2003. The Bureau of Alcohol, Tobacco and Firearms is the primary government agency responsible for regulating³ explosives in the United States. (**Web Resource 1**)

ATF is charged with oversight over all persons involved in the sale, manufacture, transportation and storage of explosives. ATF enforcement

¹ P.L. 91-452

² P. L.107-296

³ 27 CFR Part 55 Commerce in Explosives

includes licensing individuals and businesses engaged in importing, manufacturing, storage, and transportation of explosives.

The definition of person found in ATF regulations specifically excludes all public entities such as state, county, and local law enforcement agencies⁴, however these organizations are encouraged to follow ATF procedures.

(Attachment 5)

The ATF has no regulations dealing with security enhancements for explosives storage facilities such as the use of alarm systems and sentry requirements. However, there are regulations on the safe storage of explosives. **(Attachment 6)**

Although there is no obligation on the part of local law enforcement agencies to construct storage bunkers in accordance with ATF regulations, many agencies voluntarily comply with ATF regulations in addition to any guidelines promulgated by state and local governments.

The ATF designates five different types of storage facilities, also known as magazines. The 5 types of storage facilities have uniform inspection and location requirements. These include:

- **Inspection Requirements** Any person storing explosive materials shall inspect his magazines at least every seven days sufficient enough to determine whether there has been an unauthorized entry or unauthorized removal from the magazine.
- **Location Requirements** There is a sliding scale (based on the amount of the explosives stored) for the distance from inhabited buildings, public highways, or from other magazines. As an example, a magazine storing between 200 and 250 pounds of explosives would have to be built at least 510 feet from a building; 210 feet from a low traffic highway and 378 from a high traffic highway. In addition the

⁴ The ATF has held that certain public entities, such as public utility companies engaged in line and facility construction, which manufacture explosives on a regular or continual basis are considered to be engaged in the business of manufacturing materials and must be appropriately licensed. As such these public companies are subject to ATF oversight. See, ATF Rule. 75-31.

barricades would need to be kept at least 46 feet from another magazine.

- **Construction Regulations** Buildings are to have no openings except for entrances and ventilation. The doors are to be constructed of not less than ¼ inch plate steel and lined with at least two inches of hardwood. Hinges and hasps are to be attached to the doors by welding, riveting or bolting (nuts on inside of door).
- **Security Locks** Each door is to be equipped with a lock. The regulations allow for various types of locks; either (i) two mortise locks (ii) two padlocks fastened in separate hasps and staples (iii) a combination of mortise lock and padlock (iv) a mortise lock that requires two keys to open; or (v) a three-point lock. Padlocks must be protected with not less than ¼ inch steel hoods constructed so as to prevent sawing or lever action. The regulations on locks do not apply to magazine doors that are adequately secured on the inside by means of a bolt, lock, or bar that cannot be activated from the outside.

The Safe Explosives Act

In 2002 Congress passed the Safe Explosives Act.⁵ The Safe Explosives Act requires people who want to acquire and possess explosive materials to obtain a permit. The purpose is to impede the availability of explosives to terrorists, felons and others prohibited by federal law from possessing these materials. **(Attachment 7)**

Under the previous law anyone who is involved in interstate shipment, purchase, or possession of explosives needed a federal permit. The Safe Explosives Act creates the same requirement for intrastate purchases. It calls for two types of permits for these intrastate purchasers: user permits and limited user permits. The user permit lasts for three years and allows unlimited explosives purchases. The limited user permit expires after one year, but allows for six purchases per year. The two-tier system ensures that low-volume users will not be overly burdened by regulations. The limited permit, like the user permit, imposes common-sense rules such as a

⁵ Ibid.,2.

background check, monitoring of explosives purchases, secure storage, and report of sale or theft of explosives. **(Attachment 8)**

The Act also improves the public's safety by requiring permit holders to adhere to proper storage and safety regulations of explosives as proscribed by the Bureau of Alcohol, Tobacco and Firearms. These provisions will help ensure the safety of explosives handlers, and prevent accidental or criminal detonation of explosives. In addition, AFT is required to physically inspect all AFT licensees and permittees at least once every three years to insure compliance with explosive storage regulations. **(Attachment 7, pg. 2)**

Recently, ATF developed a *Security Checklist*, which is currently under review and approval by the Office of the Attorney General. The security check list outlines *voluntary* (emphasis added) actions the explosives industry can utilize to assess risks and make their explosive storage facilities more secure. Safeguards and security actions for the protection of storage facilities include development of actions plans in event of stolen explosive material, access to keys, surveillance technology, and other security devices. **(Attachment 9)**

Subcommittee staff has been unable to determine the number of publicly owned explosive storage facilities and the extent to which states regulate facilities managed by local law enforcement agencies. On July 23, 2004, Chairman Shays and Congressman Lantos asked the Comptroller General David Walker, Government Accountability Office (GAO) to conduct a study to ascertain what action is being taken at both the federal and local level to address explosive storage facility vulnerabilities and risks in a systematic and comprehensive manner. **(Attachment 10)**

DISCUSSION OF HEARING ISSUE

1. To what extent are the Bureau of Alcohol, Tobacco and Firearms (ATF) explosives storage facility safeguards and security guidelines adequate and effective in protecting publicly managed magazines?

While it is not possible to eliminate the vulnerability of all attractive terrorist targets throughout the country, strategic improvements in security can make it more difficult for attacks to succeed and can lessen the impact of attacks that may occur.

In addition to strategic security enhancements, tactical security improvements can be rapidly implemented to neutralize potential targets. Some are arguing explosives storage facilities operated by state and local agencies may be more vulnerable to theft, sabotage or terrorist attack than those operated by businesses and private individuals, which are regulated by the ATF. Since each state regulates publicly operated explosives storage facilities within their borders, some argue that uniform nationwide security standards for public storage facilities should be implemented.

ATF has extensive rules and regulations for safeguarding explosive storage facilities operated by business, industry and private individuals. Those regulations for the most part deal with storage of explosives, facility construction, and inspections. In addition, Congress strengthened the licensing and inspection procedures under the Safe Explosives Act to give ATF additional authority to monitor who can operate and maintain explosives storage facilities. This change resulted in approximately 3,000 additional licensees or approximately 12,000 permits nationwide. Subcommittee staff has been unable to determine how many additional permits would be generated should ATF be required to license and inspect state and local storage facilities.

Adherence to federal security requirements for storage facilities maintained by state and local law enforcement officials is voluntary. As a result, it is unclear whether local law enforcement agencies meet minimal ATF safeguard guidelines or whether State and local security requirements provide for adequate security.

In January 2003, AFT published proposed revisions to strengthen explosives storage facility safeguards. Those revisions for the most part deal only with the construction of the facilities and storage of explosives. The revisions do not address in any meaningful way the issue of security as it relates to the use of alarms, fencing, surveillance and other security technology and methods that would hinder theft or sabotage of these facilities, nor would they apply to state and local facilities. According to ATF, the Department received numerous letters in opposition to the proposed revisions that resulted in delaying implementation. **(Attachment 11)**

Recently, ATF sent out a security checklist **(Attachment 9)** that outlines voluntary actions businesses and individuals could utilize to makes their

explosives storage facilities more secure. Security actions covered include access to keys, magazine security, job site security, signage, surveillance and security training. According to some, there is resistance to mandating these security actions due to cost considerations. The security checklist is under review by the Department of Justice.

After more than one year, the new regulations and the security checklist are still under review by the Department of Justice. Although, the proposed regulations and checklist are a step in the right direction, there does not appear to be any sense of urgency by the Department to approve the ATF proposed regulation.

ATF Inspections

ATF requires owners of explosives to inspect their facilities on a weekly basis. In addition, ATF is required to inspect the facilities at least every three years to insure compliance with safeguard and security guidelines. Although, state and local storage facilities must comply with the weekly inspection requirement, ATF has no jurisdiction to verify compliance.

Recently, the Department of Justice, Office of Inspector General released a report regarding ATF firearms and explosives inspectors. **(Web Resource 2)** According to the Inspector General, increasing the efficiency of the inspection process is needed because the demand on ATF inspectors to perform duties related to explosives is increasing.

The new Safe Explosives Act increased the number of explosives licensees and directed the ATF to conduct on-site inspections of explosives licensees at least once every three years. Some are arguing ATF inspectors are being stretched thin by increased demands for terror-related investigations and inspections. After the September 11, 2001 attacks, ATF started investigating every theft or loss of explosive materials, something the agency had not done before. With fewer than 500 inspectors, the new ATF inspection policies have become a burden for the Bureau affecting the frequency and quality of inspections. The inspection burden will increase should ATF be required to verify state and local security requirements.

WITNESS TESTIMONY

PANEL ONE

Walfred A. Nelson, Deputy Assistant Director, Enforcement Programs and Services Division, The Bureau of Alcohol, Tobacco and Firearms will testify about the ATF explosive material inspections program and the Bureau's safeguard and security guidelines for the protection of explosives storage facilities.

Mr. Michael Gulledge, Director, Office of Evaluation and Inspections Division, Office of the Inspector General, U. S. Department of Justice will testify about the ATF inspection program and recent findings that since September 11, 2001 there are fewer than 500 inspectors and as a result ATF inspections are infrequent and of inconsistent quality.

PANEL TWO

Mr. Scott MacGregor, Assistant Chief California Highway Patrol, California Department of Justice, Sacramento, California will testify about state storage regulations.

The Honorable Mark Church, President, San Mateo County Board of Supervisors will testify about the need for federal oversight of State and local explosive storage facilities.

The Honorable Michael Nevin, Supervisor, San Mateo County Board of Supervisors will testify about the need for federal oversight of State and local explosive storage facilities.

Mr. Gregory Suhr, Deputy Chief of Police, San Francisco Police Department (SFPD), City of San Francisco, California, will testify about SFPD oversight of the San Mateo County explosives storage facility security and recommendations for security improvements.

The Honorable Don Horsley, County Sheriff, San Mateo County Sheriff's Office will testify about the San Mateo County explosives storage facility security improvements.

PANEL THREE

Mr. James Christopher Ronay, President, The Institute of Makers of Explosives (IME) will testify about industry best practices for protecting explosive storage facilities and about safeguards and security initiatives adopted by the explosives industry since September 11, 2001.

Mr. Barney T. Villa, International Director, International Association of Bomb Technicians and Investigators (IABTI) will testify about explosive material and security improvements.

ATTACHMENTS

1. Bureau of Alcohol, Tobacco and Firearms, Office of Firearms, Explosives and Arson, *The Explosives Industry and AFT*, Eugene Baker, Explosives Industry Analyst, Arson & Explosives Division, AFT.
2. SFGate.com, San Mateo County, *Theft of Explosives Well Planned*, Ryan Kim, Chronicle Staff Writer, July, 8, 2004; San Diego Union Tribune, *AFT Appeals for Help Recovering Explosives Stolen from San Mateo County*, Associated Press, July 7, 2003; PR Newswire, *AFT Arrests Man Suspected of Stealing Explosives*, July 8, 2004; Tri-Valley Herald Online, *Explosives Theft Suspect Arrested*, Ivan Delventhal, Staff Writer, July 9, 2004; The Mercury News, *Explosives Found: Man Held*, Will Oremus and Thaa Walker, July 8, 2004.
3. Oakland Tribune, *Businesses Give Money to Keep Explosives Safe*, Amy Yarbrough, Staff Writer, July 10, 2004.
4. Federal Explosives Law, Organized Crime Control Act of 1970, Title XI, *Regulation of Explosives*, Public Law 91-452, Approved October 15, 1970 (as Amended).
5. United State Code Annotated, Title 18, Crimes and Criminal Procedure, Chapter 40, Section 841-848, *Importation, Manufacture, Distribution and Storage of Explosive Materials*.
6. Code of Federal Regulations, Title 18, Subpart K, *Storage of Explosive Material*.
7. Department of the Treasury, The Bureau of Alcohol, Tobacco and Firearms, *Safe Explosives Act Fact Sheet*, December 12, 2002.
8. Department of the Treasury, The Bureau of Alcohol, Tobacco and Firearms, ATF Poster, *Federal License or Permit Requirement*.
9. Draft Threat Assessment, *Security Checklist, Attachment 1*, the Bureau of Alcohol, Tobacco and Firearms, Department of Justice.

10. Letter dated July 23, 2004 from Chairman Christopher Shays, National Security, Emerging Threats and International Relations Subcommittee and Congressman Tom Lantos (CA-12) to Mr. David Walker, U.S. Comptroller General, Government Accountability Office (GAO), Washington, D.C.

11. Federal Register, Vol. 68, No. 19 January 29, 2003, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 27 CFR Part 55 (Notice 968), *Commerce in Explosives* (2000R-9P).

WEB RESOURCES

1. Department of Justice, Bureau of Alcohol, Tobacco and Firearms
<www.atf.gov>
Visited July 19, 2004.

2. Department of Justice, Office of the Inspector General, *Inspections of Firearms Dealers by the Bureau of Alcohol, Tobacco, Firearms and Explosives*, Report Number I-2004-005, July 2004.
<<http://www.usdoj.gov/oig/inspection/ATF/0405/final.pdf>>
Visited July 22, 2004

WITNESS LIST

PANEL ONE

Mr. Walfred A. Nelson, Deputy Assistant Director
Enforcement Programs and Services Division
The Bureau of Alcohol, Tobacco and Firearms
U.S. Department of Justice

Mr. Michael Gullledge, Director
Office of Evaluation and Inspections Division
Office of the Inspector General
U. S. Department of Justice

PANEL TWO

The Honorable Mark Church, President
San Mateo County Board of Supervisors
State of California

The Honorable Michael Nevin, Supervisor
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Mr. Scott MacGregor, Assistant Chief
California Highway Patrol
California Department of Justice
Sacramento, California

Mr. Gregory Suhr, Deputy Chief of Police
San Francisco Police Department
City of San Francisco, California

Mr. Don Horsley, County Sheriff
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Mr. Barney T. Villa, International Director
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Whittier, California